IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 87 OF 2006

MRS. SANTANA PIMENTA ... Appellant
Versus
MRS. FILOMENA TEREZA E LEITAO AND ANR. ... Respondents

Shri G. Teles with Ms. F.Misquita,Advocates for the Appellant.
Shri F.M.Reis, Advocate for the Respondents.

Coram:- R. S. MOHITE, J.

Date:- 3rd August, 2007

P.C.

Heard Advocate for the appellant. He has pressed for admission of the petition on the substantial question of law as mentioned in paras. 9(b) and 9(d) of the appeal memo. The suit filed by the present appellant who was the original plaintiff was for specific performance of Agreement to sale dated 12.1.84. Both the Lower Courts have come to concurrent finding of fact that the Vendor Maria Antonieta Viegas did not have right to alienate the said property in favour of plaintiff. Record indicates that property was originally belonging to the husband of Maria by name Trinidade Augusto Leitao. He appointed his wife Maria as universal heir and bequeathed all the assets movable and immovable on the condition that she would maintain and transmit to one Filomena Tereza e Leitao all such bequeathed assets. This Filomena is the contesting party who is respondent No.1 before me and who was also contesting defendant in the suit to the Lower Courts. The Advocate for the appellants contended that relying upon Articles 1866 of the Family Laws of Goa, Daman and Diu it was wrongly held that Maria Viegas was only entrusted with the duty of preserving and transmitting the inheritance to Filomena and had no right to dispose off the property during the life time. In fact this position is

absolutely clear on the reading of the Will itself. It was contended on behalf of appellant that Article 1866 of the Family Law is wrongly relied upon by the Lower Courts and while interpreting the Will. He placed reliance on the judgment of Apex Court in the case of Hero Vinoth Versus Seshammal, reported in AIR 2006, S.C., 2234 in which the Apex Court held that misconstruction of document or wrong application of principle of law while interpreting the document amounts a substantial question of law. In my view, even for a moment if Article 1866 of the Family Law is not taken into account, the will by itself is absolutely clear and gives no right to alienate the property to the Vendor who had executed the agreement of sale. Even reading of Article 1866, I am not in favour of interpretation which is being sought to be put on the said Article. It was sought to be argued that the words 'at his death should mean the death of the intermediate party.' That interpretation will lead to an absurdity. There is no question of preserving and transmitting the inheritance after the death of intermediate party. Even on the question of readiness and willingness both the Lower Courts concurrently held on the basis of documentary evidence on record. There was no willingness on the part of plaintiff. There is no substantial question of law which arises in the appeal. Appeal therefore, stands dismissed.

R. S. MOHITE, J.

SMA